Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1555

ALBERT A. BENSABAT, III,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
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ALBERT A. BENSABAT, III,
Petitioner,

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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petition of Albert A. Bensabat, III respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on March 6, 1978 affirming the conviction of the petitioner.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit was rendered on March 6, 1978. It

is reported at 568 F.2d 1226. No opinion was issued on the denial of rehearing on March 30, 1978.

JURISDICTION

Petitioner was convicted by a jury and sentenced by the trial court in the United States District Court for the Eastern District of Louisiana. Petitioner appealed to the United States Court of Appeals for the Fifth Circuit which rendered its judgment affirming the conviction on March 6, 1978. A rehearing was denied on March 30, 1978. Jurisdiction here is invoked under the authority of 28 USC §1254(1).

THE QUESTION PRESENTED

1. What standard for disclosure to the defendant is to be applied by the trial court under *Brady v. Maryland*, 373 US 83, 83 S.Ct. 1194 when statements of key government witnesses are submitted in camera by the prosecution during trial which contain potentially impeaching statements?

STATEMENT OF THE CASE

Albert A. Bensabat, III, an attorney, was convicted on three counts of a six count indictment charging him with conspiracy to import cocaine, conspiracy to possess with the intent to distribute, and to distribute, cocaine; and possession with intent to distribute cocaine. He was sentenced to the maximum penalty of fifteen years imprisonment on each Count to be served concurrently. Three other persons, Andre Duvic, Brian C. Beranek and James E. Mayfield, were also

named as defendants in the substantive and conspiracy counts. Prior to trial, those defendants entered into a plea bargain agreement with the government. Each was permitted to plead guilty to less than all the charges in return for their agreement to testify on behalf of the government in any grand jury proceeding or trial.

At the trial of Bensabat, all three of the plea bargainers testified. Bensabat did not testify and called no witnesses. He has not made bond pending appeal and is presently in the custody of the Attorney General.

The government's case sought to prove a plan whereby James Mayfield, Brian Beranek and Andre Duvic confected and implemented a scheme to import a kilogram of cocaine into the United States.[1] Ben-

---

1 The plan was executed in the following fashion. Mayfield, who had been successively an informer for the New Orleans Police Department, for the Federal Bureau of Investigation, and for the Drug Enforcement Administration, was a resourceful schemer, given to masterminding various plans to smuggle contraband into the United States. An associate of his in this and previous schemes was Beranek. Beranek had himself earlier physically imported cocaine into Miami. Mayfield testified that he determined the best way to import cocaine would be with the assistance and involvement of two New Orleans police officers, Andrew Haab and Louis Dabdoub for whom he had previously worked as an informer. Mayfield thought that the two officers had been corrupted to work on his side; in fact, however, the officers testified that they were working undercover throughout the period in question and that all actions were reported to their case supervisor, Bernie Fenger, an agent of the Drug Enforcement Administration. Mayfield and Beranek arranged for Andre Duvic to go to South America and pick up a suitcase in which a quantity of cocaine had been concealed by Mayfield's South American sources. Mayfield advised Haab and Dabdoub of this trip so that Haab and Dabdoub could station themselves at customs at the New Orleans airport to insure that no problems arose for Duvic upon his return. Haab and Dab-

sabat's involvement with the scheme to import the cocaine was predicated solely on the testimony of Mayfield.[2] Bensabat's involvement in the purchase of the cocaine at the motel was predicated on the testimony of Mayfield and Beranek.[3] Bensabat was arrested later on the night of the sale after coming out of church with his wife and while driving a car other than the car of the buyer at the motel.[4] The search

doub made sure that Duvic got through customs and by prearranged plans secured from Duvic the suitcase of cocaine and transported it to a motel room where they met Mayfield and Beranek. There Mayfield, Beranek, Haab, and Dabdoub together cut the cocaine with procaine, a drug resembling novocaine supplied by the two officers, and packaged the cocaine-procaine mixture using a blender, plastic bags, and a heat sealer also supplied by the two officers. Mayfield then allegedly contacted Bensabat and asked him to come to the motel if he wished to buy some cocaine. According to Mayfield and Beranek, Bensabat came to the motel room the night of importation and purchased some of the cocaine. Bensabat was arrested at another location in New Orleans and, pursuant to a search warrant, a quantity of cocaine, identifiable with cocaine in the motel room, was seized from his residence. Dabdoub claimed to be the person who found the cocaine in Bensabat's apartment.

2 Mayfield testified that he had advised Bensabat that the cocaine would shortly arrive several days before the actual importation.

3 Mayfield and Beranek were alone in the motel room with the buyer. The undercover officer in an adjoining room never saw the buyer's face but "thought" the buyer was Bensabat after a very short glance at the back of the buyer's head (T.R. 808). Specifically, the officer could not testify he had seen Bensabat in the motel room and even though the room was bugged the officer could not recognize the voice of the buyer.

4 Bensabat and his wife were arrested at a downtown New Orleans church in a Mercedes automobile about one hour after the sale of the cocaine. The motel where the sale was made was in New Orleans East. The buyer of the cocaine was alleged to be driving a red and black Porsche although no testimony ever connected the buyer with the Porsche after the sale.

warrant was executed at Bensabat's residence the next day while Bensabat was incarcerated.[5]

Bensabat's defense was predicated on the incredibility of the testimony of Mayfield and Beranek.[6] Prior to trial, defendant had filed the usual discovery motions including a demand for exculpatory evidence, under *Brady v. Maryland* and the Jencks Act, 18 USC 3500.[7] In response to the discovery motions the government responded as follows:

> The government wishes to inform the court that on approximately May 7, 1976 [counsel] for defendant Albert A. Bensabat, III, appeared in the United States Attorney's office . . . and read the entire case report of the Drug Enforcement Administration. The government also made available to the defendant, copies of the search warrant and the affidavit in this case and all tapes that were to be used as evidence. . . . The only restriction on disclosing the government's evidence was that any statements or grand jury testimony of co-

5 Bensabat was arrested at 9:15 P.M. on April 4, 1976. The warrant was executed the following morning at 1:15 A.M.

6 "I submit to you at the close of all the evidence in this case you will conclude one of two things; number one, that this story of the principal Government witness is totally incredible and contradictory and unbelievable and, therefore, supportive of no idea that one is proven guilty beyond a reasonable doubt and overcomes the presumption of innocence." (Plaintiff's Opening Statement, T.R. p. 92)

7 Defendant's motion sought "any and all evidence, oral, written or recorded statements and material known to the United States Government which tends to raise a reasonable doubt as to the guilt of the defendant as to charges in the indictment."

> conspirators in this case would not be disclosed to the defense until the Jencks Act material was turned over. The government wishes to inform the court and the defendant at this time that material under [the Jencks Act] is not required to be given until after the witness testifies. But, in order to facilitate the trial, the government agrees to turn over this material at least two days before the start of the trial. (R. 159).

As a consequence of these representations, the defendant's discovery motions were dismissed as moot with the notation that "the government and the defendant have agreed on the scope and timing of discovery and this Court need not rule on any of these motions". (T.R. 189)

In fact, the government had expunged certain portions of the police reports provided to Bensabat and did not disclose the existence of two statements taken from Mayfield and Beranek until the fourth day of trial after Mayfield and Beranek had undergone direct and cross-examination.[8] What had been expunged from the police reports were statements made by Mayfield to the undercover police officers that the actual ultimate purchaser of the cocaine was not to be Albert Bensabat but a New Orleans state judge. This, of course, was inconsistent with the government's

8 Defendant was ordered to return all Jencks material after trial and has never seen the two statements under seal. Accordingly, defendant has made a request pursuant to Rule 21, Revised Rule of the Supreme Court of the United States to Clerk of Court for the United States Court of Appeals for the Fifth Circuit to certify and transmit the pertinent portions of the record to this Court.

theory of the case as expressed in its opening statement that:

> "They went through all of this plan to bring it back for a lawyer by the name of Albert A. Bensabat, III and this was the man to get the cocaine after it was treated and sell it." (T.R. 88-89)

The two statements of Mayfield and Beranek were produced in camera to the Court which denied their production after a specific *Brady* request by defendant and sealed in the record.[9] Defendant has never seen these statements of Mayfield and Beranek. However, after oral argument of this matter before the United States Court of Appeal for the Fifth Circuit, the New Orleans Times-Picayune edition of February 15, 1978 carried quotations from the two sealed statements indicating that Beranek had stated to agents of the Drug Enforcement Administration that he knew the state judge and had been present when a money transaction took place between the state judge and Bensabat. Initially, prior to trial, the government's explanation for the expunged portions of the police reports was that they expunged material having nothing to do with the case. During trial, the government then explained that disclosure of the expunged material would affect an ongoing investigation. The last explanation given by the government was that

9 The statements of Mayfield and Beranek had been given to the DEA on June 7 and July 22, 1976. The trial began on November 8, 1976. The government submitted the statements to the Court which were sealed by the Court on November 11, 1976. The disclosure of the expurgated portions of the police reports took place as the last order of business on Friday, November 12, 1976.

disclosure of the expunged material might create a conflict of interest for the defendant's counsel.[10] Ultimately the government disclosed the expunged material when it became clear that the Court was going to order its disclosure. As to the statements of Mayfield and Beranek, the government first mentioned the statements on the fourth day of trial and resisted the disclosure on the grounds that the statements were not exculpatory under *Brady* and did not relate to the direct testimony under the *Jencks Act*. The trial court agreed and sealed the statements.[11] Other than reading portions of the sealed statements in the newspaper a year after the trial, defendant has never seen the two statements of Mayfield and Beranek.

At trial, contrary to their previous statements, the government's witnesses eliminated references to the state judge and directed their testimony solely toward Bensabat.[12] The reason they did so was because the

10 Some three years previously undersigned counsel had successfully defended the state judge on state criminal charges. The first notice of the statements of Mayfield regarding the state judge's involvement came to counsel's attention in the fourth day of trial. A motion to dismiss the charges by defendant on the basis of the government's representations regarding the expurgated material had been made and denied before the disclosure to defendant of the statements regarding the state judge.

11 T.R. pp. 436-442.

12 Appendix 3 contains sample references from the record indicating the manner in which the witnesses tailored their answer to eliminate references previously made to the undercover officers.

United States Attorney had directed them to do so.[13]

ARGUMENT

This case presents the as yet unanswered question of the standard to be applied by the trial court when reviewing in camera, during trial, statements of prosecution witnesses submitted by the government under the fair trial requirements of *Brady v. Maryland*, 373 US 83, 83 S.Ct. 1194. The procedure of in camera review of prosecution witness statements is mandated under the Jencks Act, 18 USC §3500 in *Goldberg v. United States*, 425 U.S. 94, 96 S.Ct. 1338 and suggested for *Brady* material in *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392.[14]

13 "Now, yesterday, a name came out in the trial, 'Judge Jerome Winsberg.' Ladies and gentlemen, I hope you realize that that name was brought out, not by the Government, but by the Defense. I'll tell you, and I hope you realize that my witnesses, I told them not to mention that name. Why? Because I don't think it's fair to Judge Winsberg to have his name brought out when there is absolutely no evidence on him. Where does it come from? It came from Mayfield. Where did Mayfield get it? From Bensabat. That's where Mayfield got it from. It was brought out that Mayfield never knew Judge Jerome Winsberg. We know he did. Whether or not Judge Jerome Winsberg is involved in this remains to be seen. I can tell you at this time it was totally unnecessary for the Defense to bring his name out." (Government's Rebuttal Argument, T.R. pp. 976-977).

14 "Although there is, of course, no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor, if the subject matter of such a request is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable to require the prosecutor to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable." *United States v. Agurs, supra* at 2399.

Heretofore, the fair trial issues has been considered in a context of a pre-trial prosecutorial decision versus post-trial judge's decision on non-disclosure of potentially exculpatory or impeachment material.

> "The problem arises in two principal contexts. First, in advance of trial and perhaps during the course of the trial itself as well, the prosecutor must decide what, if anything, he should voluntarily submit to defense counsel. Second, after trial a judge may be required to decide whether a non disclosure deprived the defendant of his right to due process." *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 2399.

When the disclosure to and determination by the trial court is made post trial, standards have been established for evidence exculpatory of the defendant, *United States v. Agurs, supra*, and evidence which could have been used for impeachment by the defendant. *Garrison v. Maggio*, (5 Cir.) 540 F.2d 1271. Both standards require evaluation in the context of the whole record.

In this case, however, the prosecution urged its *Brady* disclaimer and submitted the statements to the Court in the middle of the trial and after the two witnesses had undergone direct and cross-examination. In point of fact, as to the expunged portions of the undercover officers statements, the trial court ordered disclosure of information which apparently was related to information in the sealed statements.[15] The

15 It is unclear whether the trial court ever considered the *Brady* request when the decision to seal the statements was made. The trial court appears to have inquired only whether the statements related to the witnesses direct testimony, a *Jencks* act standard.

trial court is unable to apply the *Agurs* and *Garrison* standards during trial since the dynamics of the trial have not been frozen into a record. Moreover, once the prosecution has transferred its fair trial disclosure obligation to the trial court, the trial court can have no lower standard than the prosecution and, in all likelihood, has a higher one since the court does not act as an advocate.

Similarly, the standard cannot be harmless error. The Court of Appeals reference to harmless error in footnote 2 of the opinion below is inapposite with respect to the suppressed statements of Mayfield and Beranek since defendant may have known of the existence of the statements but did not know their content. In any event, harmless error is a post trial consideration and not a standard for a *Brady* determination during trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of April, 1978, served three copies each of the foregoing petition on all interested parties by depositing same in a United States mailbox, postage prepaid, addressed as follows:

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JOHN R. MARTZELL

APPENDIX I

UNITED STATES of America,
Plaintiff-Appellee,

versus

Albert A. BENSABAT, III,
Defendant-Appellant.

No. 77-5010.

United States Court of Appeals,
Fifth Circuit.

March 6, 1978.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before COLEMAN and FAY, Circuit Judges, and KING, District Judge.*

FAY, Circuit Judge:

On November 16, 1976, Albert Bensabat was convicted by a jury of conspiring to import cocaine, conspiring to possess cocaine with the intent to distribute, and possession of cocaine with the intent to distribute. Bensabat was subsequently sentenced to

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* James Lawrence King, District Judge for the Southern District of Florida, sitting by designation.

fifteen years in prison on each count with the sentences to run concurrently. The defendant raises several errors on appeal, but only one of these is worthy of comment.[1] Bensabat attempts to set forth a pattern of governmental misconduct and concealment of evidence which allegedly interfered with his right to present an effective defense and consequently denied him a fair trial. Bensabat urges this Court to reverse his conviction through the exercise of its supervisory power over the conduct of criminal trials. We have carefully reviewed the conduct of the government in this case, and we find no error of such a dimension to warrant reversal.

The facts leading to the arrest of the defendant are not seriously contested. John Mayfield, who had previously been an informer for various federal and state law enforcement offices, was the mastermind of this cocaine importation scheme. Mayfield had an associate by the name of Brian Beranek. Mayfield determined that the best way to import cocaine would be to elicit the assistance of two New Orleans police officers. Mayfield was under the impression that officers Andrew Haab and Louis Dabdoub would, if adequately compensated, assist the smugglers in clearing customs at the airport, furnish Mayfield with whatever intelligence that had been gathered by various law enforcement authorities, and protect Mayfield from being "ripped-off." However, to Mayfield's ultimate chagrin, the two officers were

1 The defendant's assignments of errors regarding the hearsay statements of alleged co-conspirators, and what constituted the "best evidence" with regards to certain taped conversations are totally frivolous and will not be discussed.

working undercover throughout the entire period in question, and were reporting all actions to an agent of the Drug Enforcement Agency.

In March of 1976, Mayfield and Beranek hired Phil Duvic to be their courier, and they arranged for Duvic to go to South America and pick up a suitcase in which a quantity of cocaine had been concealed by Mayfield's South American sources. Mayfield advised Haab and Dabdoub of the trip so that they could station themselves at customs at the New Orleans airport to insure that no problems arose for Duvic upon his return. After insuring that Duvic got through customs, Haab and Dabdoub secured from Duvic the suitcase of cocaine and transported it to a motel room where they met Mayfield and Beranek. At the motel room, Mayfield, Beranek, Haab, and Dabdoub "cut" the cocaine with procaine (a drug resembling novocaine), and packaged this mixture in plastic bags. Mayfield then contacted the defendant and asked him to come to the motel if he wished to buy some cocaine. Bensabat came to the motel, acquired some of the cocaine, and departed. At this time, a decision was made to arrest Mayfield and Beranek. The defendant was arrested a short time later, and then, pursuant to a valid search warrant, a quantity of cocaine was seized from his home. Mayfield, Beranek, and Duvic pleaded guilty to the different charges and received varying sentences. Only Mr. Bensabat chose to go to trial.

The errors raised by the defendant are concerned exclusively with the government's conduct during trial. The testimony of the government's witnesses at trial indicated that during the planning stage of this conspiracy the defendant was known as the person who

would ultimately purchase the cocaine. Bensabat complains that the government withheld from him evidence in their possession which indicated that early in the conspiracy Mayfield actually had another purchaser in mind. This fact was not revealed to the defendant until the fourth day at trial when the trial judge ordered the government to disclose some of the statements expunged from the *Jencks* material given to the defendant. This material indicated that at one time Mayfield anticipated that a sitting judge in the Parish of Orleans would purchase the cocaine.

The defendant argues several theories on why the withholding of this information denied him a fair trial. The government's explanation is rather simple — the government felt that it complied with the technical requirements of the Jencks Act, 18 U.S.C. § 3500, and that it would be inappropriate to subject a sitting judge to public ridicule when there was insufficient evidence to bring a criminal indictment against him. The defendant counters this by arguing that even though the *Jencks Act* was technically complied with, the materials which were given to him, and possibly other materials which were withheld from him, were exculpatory and should have been earlier disclosed under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Under *Brady*, the government is obligated to give all exculpatory material to a defendant. A failure to disclose this is a denial of due process. We have reviewed each and every portion of the material which was given to the defendant, and also that material which was withheld from him, and we have determined that it is in no way exculpatory, and was, therefore, properly withheld. We are aware that the defendant is in an unusual position in that he

has not seen some of this material which he argues should have disclosed. This material, however, was reviewed *in camera* by the trial court and by this Court, and this is the procedure that necessarily must be followed in this type of situation.

The defendant argues that even if this material was not required to be disclosed under *Brady* and *Jencks*, the government should have disclosed it because once it was revealed it created a possible conflict of interest for the defendant's counsel. The conflict arose apparently because some three years earlier the defendant's counsel had successfully represented the state judge on state criminal charges. We refuse to accept this argument. There is no evidence that defendant's counsel presently represented this state judge or that he was so close to him that he could expect to be retained in any future litigation. The mere fact that an attorney at one time in the past represented a person whose name now arises on the periphery of a criminal investigation does not create a conflict of interest.[2]

The defendant has brought to our attention no conduct on the part of the government which denied him a fair trial. As a result, his conviction is affirmed.

---

2 The defendant also argues that the government directed its two chief witnesses, Mayfield and Beranek, to exclude from their testimony all references to the state judge. The government admits that it instructed the two witnesses not to "blurt out" the name of the state judge, but to mention it only if necessary to truthfully answer a question. No question was asked to the witness which absolutely required the mentioning of the judge's name. In any event, the error would be harmless because after the defendant became aware of the judge's possible involvement, Mr. Mayfield and Mr. Beranek were made available to the defendant in the event that the defendant wished to further cross-examine them.

APPENDIX 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 77-5010

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

ALBERT A. BENSABAT, III,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Louisiana

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ON PETITION FOR REHEARING

(March 30, 1978)

Before COLEMAN and FAY, Circuit Judges, and KING*, District Judge.

---

* District Judge of the Southern District of Florida, sitting by designation.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:
/s/ PETER FAY
United States Circuit Judge

[Filed: Mar. 30, 1978]

APPENDIX 3

1.

" Q. Mr. Beranex, what was Mayfield's conversation with Albert Bensabat about?
A. His conversation with Albert Bensabat was regarding the sale of cocaine.
Q. What was Albert Bensabat's response?
A. Albert Bensabat's response was he not only was very interested in the sale but that he would in fact sell the cocaine."

(T.R. p. 197)

2.

" Q. Mr. Mayfield, at the time you talked to police officers Dabdoub and Haab about this cocaine, did you have any ultimate purchasers in mind for the cocaine?

A. At this particular time, yes, I had.

Q. Who was the purchaser you had in mind?

A. Albert Bensabat."

(T.R. p. 321)

3.

" Q. Now, did the New Orleans Police Officers, Dabdoub and Haab know anything about the sale?

A. At what pcint in time?

Q. Prior to October 3rd?

A. Yes, they did. That was on the night of the 3rd.

Q. On the night of the 3rd. Prior to the 3rd?

A. No.

Q. Did you tell them on the night of the 3rd who this cocaine was going to?

A. Only by first name.

Q. What did you tell them?

A. I just said "Al"."

(T.R. pps. 333-334)

4.

" Q. Did you eventually meet with the officers?

A. Yes, I did.

Q. By officers you mean Dabdoub —

A. Officers Dabdoub and Haab.

Q. What time did the meeting occur?

A. Approximately 9 p.m. the evening of the 3rd.

Q. What occurred at the meeting?

A. I told them that I did have approximately a pound of cocaine that was going to be sold that evening; it would be sold to an individual that I had never done business with before and that I would like some protection that evening.

Q. Did you tell them the individuals name?

A. I just said 'Al.'

Q. You didn't tell them the last name?

A. No."

(T.R. p. 344)

5.

" Q. Mr. Mayfield, at this point in time we are talking about February 19, 1976. Had you ever told Officers Dabdoub and Haab or any other law enforcement officers who Al was?

A. What do you mean 'Who Al was'? Please rephrase that?

Q. Let me rephrase the question. Strike the question. In the ensuing days after February 19, 1976, had you ever told Officers Dabdoub and Haab or any other law enforcement officer the name 'Albert Bensabat?'

A. No, they never were revealed his complete name.

Q. What did you refer to Mr. Bensabat as?

A. As 'Al'."

(T.R. pps. 370-371)

6.

" Q. I noticed the day before yesterday the prosecution repeatedly asked if you told the officers who Mr. Bensabat was and you told them no up until just before the sale on April 4th, is that right?

A. Correct.

Q. If you had indicated to them who this buyer was that would be more consistent with your being an informer, rather than a briber, wouldn't it?

A. I don't know.

Q. I'm asking you, sir, if you can answer it.

A. I don't really understand the full meaning of the question.

Q. If you had been an informer, one of the things you would have done would be to tell the police officers who the buyer was, wouldn't you?

A. Yes, that would be the normal thing to do if I had been an informer.

Q. Did you give them any hint as to who Mr. Bensabat was?

A. I used his first name 'Al.' I think I said, 'Al, the lawyer.' I never — there could have been a lot of lawyers by the name of 'Al', but I never —"

(T.R. pp. 519-520)

7.

" That's when they would sell it, as soon as they got at least one kilo to this attorney, 'Al', who, immediately or probably several days later would buy another kilo and several days later have several people come from out-of-town and buy the rest."

(T.R. p. 604 — undercover officer)